
UNITED STATES OF AMERICA)	
)	
)	DEFENSE REQUEST FOR
)	WITNESS
v.)	
)	(Professor Cherif Bassiouni)
)	
DAVID M. HICKS)	3 October 2004
)	

The Defense in the case of the *United States v. David M. Hicks* requests the following witness for the 01 November 2004 motion hearing at Guantanamo Bay and in support of this request the defense states:

1. Witness information:

Professor Cherif Bassiouni
Professor of Law
DePaul University, School of Law
Office Phone: XXXX
XXXX

2. Need for translator: None

2. Synopsis of testimony: It is anticipated the Mr. Bassiouni will testify as an expert in international criminal law, including but not limited to, the following:

- a. He will explain that the conspiracy charge listed in MCI 2 is not valid under international criminal law.
- b. He will explain the common law system and the civil law system, and the differences and similarities of same, used in various countries around the world. He will explain how the overwhelming majority of countries have rejected the use of conspiracy as a criminal offense.
- c. He will explain the theories of inchoate liability for offenses employed by a majority of countries, i.e., attempt, aiding and abetting, or complicity.
- d. He will explain the use of “joint criminal enterprise” or “common criminal purpose” doctrines used to form the basis for liability for individuals when a crime is committed by more than one person. He will explain that, except for the crime of conspiracy to commit genocide, a key element needed to prosecute an individual under the above referenced theories, is that the crime must have been committed or attempted.

3. Source of knowledge: I have spoken to him previously.

4. Use of testimony: This witness will testify at the motion hearing scheduled to begin 1 November 2004.

5. Reasonable availability of witness: Mr. Bassiouni says he is available and willing to come to GTMO for the hearing

6. Alternative to live testimony: Stipulation of Fact

7. **Is the witnesses cumulative with other witnesses:** No.

8. **Attachments:** The CV for Mr. Bassiouni.

By: _____
M.D. MORI
Major, U.S. Marine Corps

Curriculum Vitae

M. CHERIF BASSIOUNI

- Distinguished Research Professor of Law, DePaul University (since 1964), and President, International Human Rights Law Institute (since 1990); President, International Institute of Higher Studies in Criminal Sciences, Siracusa, Italy (since 1988), Dean (1976-88); President, International Association of Penal Law (since 1989), Secretary General (1974-89); Non-resident Professor of Criminal Law, The University of Cairo (since 1996); Guest Scholar, Woodrow Wilson International Center for Scholars, Washington, D.C. (1972); Visiting Professor of Law, N.Y.U. (1971); Fulbright-Hays Professor of International Criminal Law, The University of Freiburg, Germany (1970). A frequent lecturer at universities in the U.S. and abroad.
- Author of 24 and editor of 44 books on International Criminal Law, Comparative Criminal Law, Human Rights, and U.S. Criminal Law; and author of 217 articles published in law journals and books in the U.S. and other countries. These publications are in Arabic, English, French, Italian and Spanish. Some of them have been cited by the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the United States Supreme Court, as well as by several United States Appellate and Federal District Courts, and also by several State Supreme Courts.
- United Nations positions: Commission on Human Rights' Independent Expert on Human Rights in Afghanistan (2004-present); Chairman of the Drafting Committee of the 1998 United Nations Diplomatic Conference on the Establishment of an International Criminal Court; Vice-Chairman of the General Assembly's Preparatory Committee on the Establishment of an International Criminal Court (1996-98); Vice-Chairman of the General Assembly's Ad Hoc Committee on the Establishment of an International Criminal Court (1995); Chairman of the United Nations Commission of Experts Established Pursuant to Security Council 780 (1992) to Investigate Violations of International Humanitarian Law in the Former Yugoslavia (1993), and the Commission's Special Rapporteur on Gathering and Analysis of the Facts (1992-93); Commission on Human Rights' Independent Expert on The Rights to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms (1998-2000); Consultant to the Sixth and Seventh U.N. Congress on Crime Prevention (1980-85); Honorary Vice-President to the Fifth Congress on Crime Prevention (1975); Consultant to the Committee on Southern African, Commission of Human Right (1980-81), prepared a Draft Statute for the Creation of an International Criminal Court to prosecute *apartheid*; Co-chairman of the Committee of Experts which prepared the U.N. Convention on the Prevention and Suppression of Torture (1978).
- Consultant to the U.S. Departments of State and Justice on projects relating to international traffic in drugs (1973) and international control of terrorism (1975 and 1978-79), and as a consultant to the Department of State on the defense of the U.S. hostages in Iran (1979-80).
- Among the many distinctions and awards he received include: Nomination to the Nobel Peace Prize (1999); Special Award of the Council of Europe (1990); Defender of Democracy Award, Parliamentarians for Global Action (1998); and The Adlai Stevenson Award of the United Nations Association (1993).

- Honorary degrees: Doctor of Law *honoris causa* (LL.D.), National University of Ireland, Galway (2001); Doctor of Law *honoris causa*, University of Niagara (1997); Doctor of Law *honoris causa* (Docteur d'Etat en Droit), University of Pau, France (1986); Doctor of Law *honoris causa* (Dottore in Giurisprudenza), University of Torino, Italy (1981).
- Medals: Order of Military Valor, Egypt (1956); Order of Merit, Italy (Rank of Commendatore) (1976); Order of Merit of the Republic, Italy (Rank of Grand Ufficiale) (1977); Order of Sciences (First Class), Egypt (1984); Order of Merit of the Austrian Republic (Rank, Grand Cross) (1990); Order of Lincoln, USA (2001); Legion d'Honneur (Officier), France (2003); Cross of the Order of Merit, Federal Republic of Germany (Commander) (2003).
- Earned law degrees: LL.B. University of Cairo; J.D. Indiana University; LL.M. John Marshall Law School; S.J.D. George Washington University. Also studied law at Dijon University, France, and at the University of Geneva, Switzerland.
- Admitted to the practice of law in Illinois, Washington, D.C. and before the United States Supreme Court. Handled many cases of international dimensions; in particular, represented the government of Kuwait in its dispute concerning the nationalization of the Kuwait Oil Company. Also consulted with governments on important and major cases. Specialized in extradition and international cooperation cases, and handled over 100 such cases in the past 30 years. Coordinated major litigation involving multiple parties concerning international matters. Admitted to the practice of law in Egypt (Member, Egyptian Lawyers' Association).

MessageFrom: XXXX

Sent: Thursday, October 28, 2004 1:52 PM



DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF PROSECUTOR
1610 DEFENSE PENTAGON
WASHINGTON, DC 20301-1610

October 14, 2004

MEMORANDUM FOR DETAILED DEFENSE COUNSEL ICO DAVID MATTHEW HICKS

SUBJECT: Witness Request for Cherif Bassiouni – U.S. v. Hicks

1. On October 8, 2004 the Defense Counsel in U.S. v. Hicks requested the above named witness be produced for live testimony at Guantanamo Bay, Cuba. The Defense request for Professor Bassiouni presents a generalized description of the subject matter the Defense wishes to explore with Professor Bassiouni: the differences between the common law and civil law systems, “theories of inchoate liability for offenses employed by a majority of countries,” etc. There is no explanation that details his testimony and how it relates to the Accused. (Paragraph 3).

2. Presiding Officer’s Memorandum (POM) Number 10, dated October 4, 2004, regarding witness requests provides:

c. Paragraph 3: {Synopsis of witness’ testimony}. What the requester believes the witness will say. *Note:* Unnecessary litigation often occurs because the synopsis is insufficiently detailed or is cryptic. A well-written synopsis is prepared as though the witness were speaking (first person), and demonstrates both the testimony’s relevance and that the witness has personal knowledge of the matter offered.

3. The Defense Counsel’s request indicates the general subject matter of the testimony but does not provide the information required by POM Number 10. In addition, there is no explanation as to why Professor Bassiouni’s testimony is not cumulative with Professor Cassese’s. As written, your request is denied. If the defense produces information in accordance with POM Number 10, the Prosecution will reconsider the request at that time.

4. The Prosecution further objects to the testimony of Prof. Bassiouni for the reasons set out in the document entitled: “Prosecution Response to Defense Witness Requests of 8 October 2004 and Motion to Exclude Attorney and Legal Commentator Opinion Testimony,” served upon Defense on October 13, 2004 and attached hereto.

Lieutenant Colonel, U.S. Marine Corps
Prosecutor
Office of Military Commissions

Attachment:
As stated



To: 'Mori, Michael, MAJ, DoD OGC'; Swann, Robert, COL, DoD OGC; XXXX
LtCol, DoD OGC; Will Col DoD OGC Gunn ; XXXX
XXXX; XXXX, COL, DoD OGC; XXXX, MSG, DoD OGC
(XXXX); Lippert, Jeffery MAJ Bamberg Law Center;
XXXX, MAJ, DoD OGC (XXXX); XXXX
Brownback, Peter E. COL (L)

Subject: US v. Hicks, Decision of the Presiding Officer, D23

United States v. Hicks

Decision of the Presiding Officer, D23

The Presiding Officer has denied the request for production of Cherif Bassiouni as a witness. The Presiding Officer did not find that he is necessary. See Military Commission Order 1, section 5H. Accordingly, this request has been moved from the active to the inactive section of the filings inventory in accordance with POM 12. See also paragraph 8, POM 12.

By Direction of the Presiding Officer

XXXX

Assistant to the Presiding Officers

XXXX

Voice: XXXX

Fax: XXXX

UNITED STATES OF AMERICA)	
)	
)	DEFENSE MOTION -
)	THE ENTIRE COMMISSION
v.)	TO GRANT PRODUCTION OF
)	WITNESS DENIED IN D 23
)	
DAVID HICKS)	(Cherif Bassiouni)
)	
		29 October 2004

The Defense previously requested that name of witness be produced. The request was denied by the Presiding Officer under the provisions of Military Commission Order 1, section 5H.

The Defense requests the Commission direct the production of the witness, and that the Commission consider the following previously made filings, and the attachments thereto, per the Filings Inventory D23, in making its determination.

- a. Motion by the defense requesting Mr. Bassiouni.
- b. Decision of the Presiding Officer denying the witness.
- c. The government response to D23, if any.

By: _____
M.D. MORI
Major, U.S. Marine Corps